



(b)(4)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Order Filed on November 9, 2018
by Clerk
U.S. Bankruptcy Court
District of New Jersey

In Re:

JAMES LUCAS and BARBARA LUCAS,

Debtors.

Case No.: 16-32586 (VFP)

Chapter: 11

Hearing Date: n/a

Judge: Vincent F. Papalia

**ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE
CONVERTED OR DISMISSED UNDER 11 U.S.C. § 1112(b)(4)
AND GRANTING RELATED RELIEF**

The relief set forth on the following page, numbered two (2) through five (5), is hereby

ORDERED.

DATED: November 9, 2018

A handwritten signature in black ink, appearing to read "Vincent F. Papalia".

Honorable Vincent F. Papalia
United States Bankruptcy Judge

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Case name: In re James Lucas and Barbara Lucas
Case no.: 16-32586 (VFP) (Chapter 11)
Caption of Order: Order to Show Cause Why Case Should Not Be Converted or Dismissed under 11 U.S.C. § 1112(b)(4) and Granting Related Relief

This matter is before the United States Bankruptcy Court for the District of New Jersey on the Court's own Order to Show Cause why the captioned voluntary Chapter 11 case should not be converted to one under Chapter 7 or dismissed under 11 U.S.C. § 1112(b)(4)(A), (E), (F), (J) and (M); and it appearing that this case has been marked by a lack of progress since its inception, as reflected by the record in this case, including the following:

1. The Debtors filed the instant petition under Chapter 13, through Counsel, on November 28, 2016.
2. The case was converted to one under Chapter 11 by Order entered on June 9, 2017 on the Debtors' motion based in part on their exceeding the debt limits under 11 U.S.C. § 109(e) for a Chapter 13 case;
3. Exclusivity expired on October 10, 2017 under 11 U.S.C. § 1121(b), and Debtors sought no extension.
4. On September 29, 2017, the Court entered an Order that (i) compelled the Debtors to file all monthly operating reports due for June through October 2017 by December 1, 2018, as none had been filed to date; and (ii) authorized any party in interest to seek conversion or dismissal by certification of default if the Debtors did not comply (Docket No. 72). Those monthly reports were timely filed under the extended deadline provided by the September 29, 2017 Order, but since that time, the Debtors have consistently filed reports late and sporadically, and reports for August, September and October are now due or past due.

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5. On December 4, 2017, the Court entered an Order that (i) required the Debtors to file a Disclosure Statement and Plan no later than February 2, 2018; and (ii) authorized the Office of the United States Trustee to seek conversion or dismissal by certification of default if the Debtors did not comply (Docket No. 82).
6. On February 4, 2018, the Debtors filed a Combined Disclosure Statement and Plan (Docket No. 85), which Debtors subsequently withdrew to correct errors but failed to resubmit (as memorialized in the Court's March 15, 2018 Order at Docket No. 89).
7. On March 15, 2018, the Court entered an Order that (i) required the Debtors to file a First Modified Plan and Disclosure Statement by March 16, 2018; and (ii) authorized the Office of the United States Trustee to seek conversion or dismissal by certification of default if the Debtors did not comply (Docket No. 89). The March 15, 2018 Order also provided that, if the Debtors chose to file a Disclosure Statement and Plan as a unitary document, it would be scheduled for separate hearings for approval and for confirmation.
8. On March 21, 2018, the Debtors filed a First Modified combined Disclosure Statement and Plan (Docket No. 90). The submission was reviewed at the scheduled March 22, 2018 status conference and was found not to provide adequate information to warrant scheduling a formal hearing for approval as a Disclosure Statement.
9. On May 8, 2018, the Debtors filed a Second Modified Disclosure Statement and Second Modified Plan (Docket Nos. 92, 93). The submissions were reviewed at the scheduled May 10, 2018 status conference and were found not to provide adequate information to warrant scheduling a formal hearing for approval of the Disclosure Statement.

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10. On July 11, 2018, the Debtors filed a Third Modified Disclosure Statement and Third Modified Plan (Docket Nos. 104, 106). By Order entered on July 16, 2018, the Court scheduled the Third Modified Disclosure Statement for a hearing for approval on August 23, 2018 (Docket No. 107).

11. At the August 23, 2018 hearing, the Court required further corrections to the Disclosure Statement and Plan and continued the hearing to September 6, 2018.

12. On September 5, 2018, the Debtors submitted the Fourth Modified Disclosure Statement and Fourth Modified Plan (mislabeled “Third Modified”) (Docket Nos. 115, 116).

13. At the September 6, 2018 hearing, the Court approved the Fourth Modified Disclosure Statement, subject to minor revisions to be incorporated and submitted promptly to the Court for final review, so that the Court could enter the Order for approval and schedule a confirmation hearing. As of the date of entry of this Order, the Debtors have not submitted a corrected Fourth Modified Disclosure Statement and corrected Fourth Modified Plan (after several reminders), and no confirmation has been scheduled.

And it appearing from the above history that, pursuant to 11 U.S.C. § 1112(b)(4)(A), (E), (F), (J), and (M), the Debtors have been unable to comply with the intent of Court Orders requiring submission of an effective Disclosure Statement and Plan, leading to the confirmation of a Plan; the Debtors have been unable to submit a timely Disclosure Statement and Plan in compliance with the Bankruptcy Code and the Orders of this Court; the Debtors have been unable to submit timely monthly operating reports; and the Debtors’ monthly reports indicate continuing losses in various months calling into question whether there is a reasonable likelihood of rehabilitation;

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under 11 U.S.C. § 1112(b)(4) and Granting Related Relief

It is therefore **ORDERED** as follows:

1. The Debtors shall show cause on Thursday, November 29, 2018 at 11:00 a.m. in the United States Bankruptcy Court for the District of New Jersey, M.L. King, Jr., Federal Courthouse, 50 Walnut Street, P. O. Box 1352, Newark, New Jersey, 07101-1352, why the captioned voluntary Chapter 11 bankruptcy case should not be converted to one under Chapter 7 or dismissed under 11 U.S.C. § 1112(b)(4).
2. Any objection or response to this Order to Show Cause shall be filed by Tuesday, November 27, 2018 and served upon Debtors; Debtors' Counsel; the Office of the United States Trustee; all relevant taxing authorities and secured creditors; and any other party that entered a notice of appearance.
3. The Debtor may satisfy this Order to Show Cause by submitting, by November 27, 2018, a revised Disclosure Statement and Plan that satisfy Bankruptcy Code requirements and this Court's comments.